

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANGEL CHEVRESTT,
Plaintiff,

- against -

APARTMENT THERAPY LLC
Defendant.

Docket No. _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Angel Chevrestt (“Chevrestt” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant Apartment Therapy LLC, (“Apartment” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of four copyrighted photographs of the tiniest apartment in New York City owned and registered by Chevrestt, a New York City based photojournalist. Accordingly, Chevrestt seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or are transacting business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Chevestt is a professional photojournalist in the business of licensing his photographs to online, print, and television stations for a fee, having a usual place of business at 248 Glen Ave., Apt. 2 Dumont, New Jersey 07628. Chevestt's photographs have appeared in many publications around the United States.

6. Upon information and belief, Apartment is a limited liability corporation duly organized and existing under the laws of the State of New York, with a place of business at 270 Lafayette Street, Suite 1204 New York, NY 10012. Upon information and belief Apartment is registered with the New York Department of State, Division of Corporations to do business in the State of New York. At all times material, hereto, Apartment has owned and operated a website at the URL: www.apartmenttherapy.com (the "Website").

STATEMENT OF FACTS

A. Background and Plaintiff's Ownership of the Photographs

7. On December 8, 2009 Chevestt photographed Zaarath and Christopher Prokop's 175 square foot micro studio (the "Photographs"). A true and correct copy of four of the Photographs are attached hereto as Exhibit A.

8. Chevestt then licensed the Photographs to The New York Post. On December 8, 2009, The New York Post ran an article that featured the Photographs on its web edition entitled, *City's Tiniest Studio*. See <http://nypost.com/2009/12/08/citys-tiniest-studio/#1>. Chevestt's name was featured in a gutter credit identifying him as the photographer of the Photographs. A true and correct copy of the Photographs in the article is attached hereto as Exhibit B.

9. Chevestt is the author of the Photographs and has at all times been the sole owner of all right, title and interest in and to the Photographs, including the copyright thereto.

B. Defendant's Infringing Activities

10. Upon information and belief, on or about December 9, 2009, Apartment ran an article written by a staff managing editor on the Website entitled *175 Square Feet! Micro Studio in Morningside Heights*. See <http://www.apartmenttherapy.com/175-square-feet-micro-studio-i-103694>. The article prominently featured the Photographs. A true and correct copy of the article is attached hereto as Exhibit C.

11. Apartment did not license the Photographs from Plaintiff for its article, nor did Apartment have Plaintiff's permission or consent to publish the Photographs on its Website.

FIRST CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST APARTMENT)
(17 U.S.C. §§ 106, 501)

12. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-11 above.

13. Apartment infringed Plaintiff's copyright in the Photographs by reproducing and publicly displaying the Photographs on the Website. Apartment is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photographs.

14. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

15. Upon information and belief, the foregoing acts of infringement by Apartment have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

16. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

17. Defendant's conduct, described above, is causing, and unless enjoined and restrained by this Court, will continue to cause Plaintiff irreparable injury that cannot be fully compensated by or measured in money damages. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Apartment be adjudged to have infringed upon Plaintiff's copyrights in the Photographs in violation of 17 U.S.C §§ 106 and 501;
2. Plaintiff be awarded Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded pre-judgment interest; and
5. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
December 19, 2016

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